

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

WRIGHT FINDS LLC	§	
Plaintiff Below,	§	
Appellant	§	
	§	
VS	§	C.A. No. JP13-23-003725
	§	
	§	
JOE KEATING	§	
Defendant Below,	§	
Appellee	§	

TRIAL DE NOVO

Submitted: July 17, 2023
Decided: August 14, 2023

APPEARANCES:

Wright Finds LLC, Plaintiff, appeared represented by Form 50 agent Stephanie Wright
Joe Keating, Defendant, failed to appear

Sean McCormick, Deputy Chief Magistrate
Peter Burcat, Justice of the Peace
Kerry Kowal, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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COURT NO. 13**

CIVIL ACTION NO: JP13-23-003725

WRIGHT FINDS LLC VS JOE KEATING

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural and Factual Background

On March 22, 2023, Plaintiff/Appellant WRIGHT FINDS LLC, by and through its *Form 50* agent Stephanie Wright, filed the present Landlord-Tenant Complaint against Defendant/Appellee JOE KEATING. Plaintiff/Appellant sought a monetary recovery and summary possession of a rental property. Plaintiff/Appellant alleged Defendant/Appellee continued to occupy the rental property and had failed to pay rent for the property. The case was scheduled for trial in JP Court 13 on July 7, 2023. All Parties were notified by the Court of the trial date. On July 7, 2023, Ms. Wright appeared via *Zoom* on behalf of Plaintiff/Appellant WRIGHT FINDS LLC. Mr. Keating likewise appeared *Pro Se* via *Zoom*. Although Plaintiff did not submit any exhibits for the trial, the Court below reviewed a Five-Day Notice with Proof of Mailing included by Plaintiff with the Complaint filed for this case. Subsequent to reviewing the language of the Five-Day Notice, the Court found the Five-Day Notice was not statutorily compliant. On July 21, 2023, the Court entered an Order Dismissing Plaintiff's Complaint. On July 18, 2023, Ms. Wright filed the present Appeal. A *Trial de Novo* was scheduled for August 9, 2023.

On August 9, 2023, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Kerry Kowal, and Justice of the Peace Peter Burcat convened for the *Trial de Novo*. Plaintiff/Appellant WRIGHT FINDS LLC appeared via *Zoom* by and through its *Form 50* agent Stephanie Wright. Defendant/Appellee JOE KEATING failed to appear. The Panel took Judicial Notice of Plaintiff/Appellant's Complaint with the attached Five-Day Notice. On August 3, 2023, which was not timely, Ms. Wright filed exhibits for the *Trial de Novo*. Ms. Wright did not include a Proof of Service confirming copies of the exhibits were provided to Mr. Keating. Ms. Wright's exhibits included a copy of the alleged Lease Agreement and numerous text messages. Ms. Wright's exhibits did not include a Five-Day Notice. However, as the Court below had done, the Panel reviewed the Five-Day Notice "issued on" February 23, 2023, and sent by Landlord/Plaintiff/Appellant on February 23, 2023 to Tenant/Defendant/Appellee. The Notice was captioned "**Notice to Pay Rent Or Quit.**" The Notice mentioned \$2,2625.00 as due and owing. The Notice further stated: "You are hereby required to pay the said amount, in full, to the landlord, within 5 (five) days after service of this written notice. . . . If payment is not made within the time period mentioned above, the rental agreement shall be terminated." It is unknown if any payment was received by Landlord/Plaintiff/Appellant as Ms. Wright did not submit a ledger to the Court and/or Panel. The Five-Day Notice made no mention of the possibility of a suit being brought against Mr. Keating in JP Court 13 for the amount due and owing, and possession of the rental property if payment was not made as per the demand Notice.

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Findings

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See 25 *Del.C.* §5101, et seq. As per Plaintiff's *Concise Statement of Facts* as set forth in its Complaint, the case at bar appears to be a residential Landlord-Tenant action.

A landlord's remedies for a tenant's failure to pay rent are set forth in 25 *Del.C.* §5502(a), which states in pertinent part:

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

In addition, a landlord may bring an action against a tenant for Summary Possession of a demised premises if the tenant "has wrongfully failed to pay the agreed rent." 25 *Del.C.* §5702(2).

As stated in 25 *Del.C.* §5502(a), the landlord is required to send a formal demand for payment to a tenant prior to commencing an action for Summary Possession. The demand notice is referred to as "the Five-Day Letter" or "Five Day Notice" because a landlord must provide the tenant at least a minimum of five (5) days to cure the non-payment of rent. The purpose of the letter is to advise the tenant that if the tenant fails to pay the rent that is due and owing the landlord, the lease agreement may be terminated, and the landlord could file an action in the JP Court seeking a monetary recovery and summary possession of the rental property. A landlord is not permitted, and does not have the legal authority, to personally evict a tenant. A landlord must file a court action seeking a *Writ of Possession*, or more commonly known as an eviction notice. It is only upon the issuance of a Court Order may a tenant be evicted. Consequently, the Panel finds that the Five (5) Day Notice herein, captioned "Notice to Pay Rent Or Quit" has advised the tenant if payment is not made he would be required to quit and deliver up possession of the premises. This advisement is deemed to not be compliant with 25 *Del. C.* §5502 as the notice contained inaccurate and inappropriate information. This is not the first time the Court has been presented with a form that is captioned "NOTICE TO QUIT." It is unknown where Ms. Wright, and others, obtained this particular form, but it is not statutorily accurate under Delaware's *Landlord Tenant Code*. This Panel must dismiss the present Appeal based upon the noted improper language contained in Landlord/Plaintiff/Appellant's "Notice to Pay Rent Or Quit." The Panel took further Judicial Notice Ms. Wright had previously been placed on notice regarding the use of an improper Five-Day Notice. On February 17, 2023, six (6) days before Ms. Wright sent Mr. Keating the "Notice to Pay Rent Or Quit" letter in the present action, Ms. Wright was advised JPCourt 13 action JP13-22-013062 was being dismissed without prejudice due to Ms. Wright sending Mr. Keating a "Delaware 5 Notice to Pay Rent or Quit." The Judge in that case specifically informed Ms. Wright that a "pay or quit" notice does not comport with the requirements of Delaware's *Landlord Tenant Code*.

As noted in the trial Court's Opinion in the present action, Delaware's Justice of the Peace Court is a Court of statutory jurisdiction. *Bomba's Rest. & Cocktail Lounge, Inc. v. Lord De La Warr Hotel, Inc.*, 389 A.2d 766 (Del. 1978). If the requirements of a statute, in this case *Title 25* of the *Delaware Code*, are not met, this Court lacks jurisdiction. A plaintiff must comply with the applicable statutory requirements for this Court to have jurisdiction to issue a judgment. A Five-Day Notice that conveys to a tenant, through the use of the words "pay or quit," that the tenant must pay the amount demanded or

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must vacate the premises, without a Court order, is improper. The Notice must be unambiguous that if the tenant does not pay the amount demanded, the landlord could seek a Court judgment for the outstanding amount and Court order for possession of the rental property. Landlord/Plaintiff/Appellant's Notice did not comply with 25 Del. C. §5502 and therefore this Panel lacks jurisdiction to award possession to Appellant.

Order

Based upon the foregoing, the Panel DENIES the Appeal and Orders that this case is **Dismissed without Prejudice**.

This Order however should not be interpreted or construed to prohibit or limit Plaintiff/Appellant's right to send Tenant/Defendant/Appellee a proper Five-Day Notice, and if necessary, file a new Complaint which may include amounts still remaining due, or additional amounts of rent deficiencies accrued, should the tenant continue to remain in possession and in arrears.

IT IS SO ORDERED 14th day of August, 2023

_____/s/ Sean McCormick (SEAL)
SEAN MCCORMICK
DEPUTY CHIEF MAGISTRATE
ON BEHALF OF THREE JUDGE PANEL

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).